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ARIZONA ATTORNEY GENERAL

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STATE CAPITOL
PHOENIX, ARIZONA

October 28, 1966

DEPARTMENT OF LAW OPINION NO. 66-24 (R-121)

REQUESTED BY: Louis Michelena, Director
NEIGHBORHOOD YOUTH CORPS

QUESTION: Are Hopi Tribal members who enroll in
Neighborhood Youth Corps under Hopi
tribal subagreement required to execute
the state loyalty oath?

ANSWER: No.

Pursuant to a subagreement between the Hopi Tribal Council and the State of Arizona, \$15,034.00 is currently allocated to the Hopi Tribal Council for use in employing Hopi youth in Neighborhood Youth Corps projects at Oraibi, Arizona. All the funds so allocated are federal funds granted to this state pursuant to the Economic Opportunity Act of 1964 (42 USCA § 2701, et seq.) and A. R. S. § 41-101.01.

The loyalty oath is prescribed by A. R. S. § 38-231, as amended. The oath is applicable to all officers and employees of each board, commission, agency and independent office of the state and any of its political subdivisions, and of any county, city, town, municipal corporation, school district and public educational institution. Elfbrandt v. Russell, U. S. _____, 16 L. Ed 2d 321 (1966) invalidated only subsection E of A. R. S. § 38-231. (Attorney General Opinion No. 66-14).

Officers and employees of Indian tribal councils are clearly not included in the requirements of A. R. S. § 38-231. (See Kane, "Jurisdiction Over Indians and Indian Reservations", 6 Ariz. L. R. 237). As stated in Association on American Indian Affairs, "Federal Indian Law", 1966, p. 512, "It is well settled that the state has no power over the conduct of Indians within the Indian country, whether or not the conduct is of special

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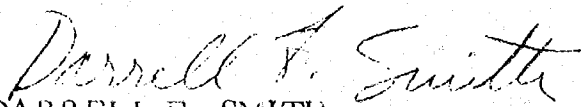
concern to the Federal Government." The precise legal status of the Indian tribe is not certain. It has been described as an "agency or instrumentality of the Federal Government", as a corporate body, or in earlier days, as a sovereign nation. (See "Federal Indian Law", *supra*, p. 468, et seq.) In any event, officers and employees of an Indian tribal council should not be considered as officers and employees of this state or any of its political subdivisions.

It is our opinion that Neighborhood Youth Corps enrollees are employees of the agency for which the work is actually performed. The Economic Opportunity Act of 1964 expressly provides that "...the Director shall assist and cooperate with state and local agencies and private non-profit organizations in developing programs for the employment of young people in state and community activities..." (Emphasis added, 42 USCA § 2732). The Act further requires that the rates of pay and other conditions of employment will be reasonable in the light of the work performed and "proficiency of the employee." (42 USCA § 2733 (a)(5).) In addition, the Act expressly provides that enrollees shall be deemed not to be federal employees. (42 USCA § 2734 (b)).

The basic sponsor agreement between the State of Arizona and the U. S. Department of Labor provides in Section 21 that enrollees will be employed only on publicly owned and operated facilities or projects, or on local projects sponsored by private non-profit organizations. Section 13 of the agreement further requires the sponsor to procure workmen's compensation insurance in such form, amounts, and for such periods as the Secretary of Labor requires.

To the extent that employment is being offered by the Hopi Tribal Council, or other private non-profit agency under a subagreement, to enrollees for work for the Tribe or private agency, it is our opinion that the loyalty oath requirement of A. R. S. § 38-231 is not applicable. To the extent that employment is offered by the state, a county, city or any of their boards, agencies or commissions, A. R. S. § 38-231 would be applicable.

Respectfully submitted,


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The Attorney General *wcc*

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